

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

UNITED STATES OF AMERICA

v.

ANIBAL VEGA, JR.,

Defendant

Criminal No. 96-9-P-C

GENE CARTER, Chief Judge

**MEMORANDUM AND ORDER DENYING  
DEFENDANT VEGA'S MOTION TO SUPPRESS**

On March 12, 1996, a federal grand jury returned a four-count indictment (Docket No. 14) against Juan Vasquez and Anibal Vega, Jr., charging them with cocaine trafficking related offenses. Now before the Court is Defendant Vega's Motion to Suppress for Lack of Probable Cause in Search Warrant (Docket No. 19) by which Defendant seeks to suppress all evidence arising out of a search of a Lewiston, Maine apartment on February 16, 1996. Because the Court concludes that the search warrant was properly issued, the Court will deny the motion.

**I. FACTS**

On February 16, 1996, Special Agent Michael Bussiere of the Maine Drug Enforcement Agency submitted an affidavit to a Maine District Court Judge to apply for a warrant to search the first-floor, rear apartment of a building located at 98 Blake Street, Lewiston. The Government has attached a copy of the affidavit to

its Objection to Motion to Suppress (Docket No. 21). The affidavit sets forth the following facts.

Agent Bussiere was conducting an investigation regarding alleged trafficking in cocaine by Debra Wing, a.k.a. "Fat Debbie." Bussiere Affidavit ¶ 1. On February 8, 1996, Bussiere and Agent Joseph Bradeen elected to use Cooperating Individual #1453 (C.I.) to make a controlled purchase of cocaine from Wing. Id. ¶ 7. Outfitted with a bodywire, the C.I. went to Wing's apartment, at which time Wing told the C.I. that they would have to go for a ride to pick up the cocaine. Id. ¶¶ 7, 8. Wing stated that she was going to buy the crack from some "Puerto Ricans." Id. ¶ 9. After driving to Blake Street, Wing was seen walking into a driveway between 96 and 98 Blake Street, but surveillance agents were unable to ascertain which building Wing entered. Id. ¶ 9. Upon returning to the car, Wing handed four bags of crack cocaine to the C.I. Id. ¶ 9.

On February 16, Agents Bussiere and Bradeen again met with the C.I. to arrange a second controlled purchase from Wing. Id. ¶ 11. The C.I. made a recorded telephone call to Wing in which Wing stated that she did not have any cocaine. Id. ¶ 11. Wing and the C.I. agreed that the C.I. "would pick Wing up at her apartment and drive Wing to a source of supply." Id. ¶ 11. Equipped with a bodywire, the C.I. picked up Wing and asked her if they were going to the same place, and Wing responded in the affirmative. Id. ¶¶ 12, 13. The C.I. then drove Wing to the

corner of Ash and Blake Streets, and Wing walked into the driveway at 98 Blake Street. Id. ¶ 13.

By his affidavit, Agent Bussiere attests that Agent Kevin Mulherin stated that he followed Wing into 98 Blake Street through the side-rear entrance and Wing was waiting at the door to the first-floor, rear apartment. Id. ¶ 13. Agent Mulherin walked up the stairs to the second floor and observed Wing waiting in front of the door for at least thirty seconds before she was let inside. Id. ¶ 13. Mulherin did not see any of the occupants of the apartment and left the apartment building before Wing. Id. ¶ 13. When Wing returned to the C.I.'s car, the C.I. asked her if she had obtained the cocaine, and Wing responded affirmatively. Id. ¶ 14. Wing gave the C.I. three baggies containing crack cocaine. Id. ¶¶ 14, 15.

The Maine District Court Judge issued a warrant to search the first-floor, rear apartment at 98 Blake Street for scheduled drugs, sums of money obtained from the sale of scheduled drugs or intended for the purchase of such drugs, business records relating to the trafficking in scheduled drugs, and drug paraphernalia. Search Warrant (Attachment to Docket No. 21).

## **II. DISCUSSION**

Defendant contends that there was no probable cause for the issuance of the search warrant and that the affidavit supporting the application for the search warrant was deficient. Defendant argues that the officers were on a "fishing expedition" without knowing which apartment Wing had entered, where Wing had obtained

the cocaine, and who and what was located inside the apartment. Defendant further contends that Agent Bussiere did not have personal knowledge as to what occurred in the hallway and he should not have relied on the hearsay statements of Agent Mulherin.

Because Defendant does not challenge the truthfulness of the factual allegations in Bussiere's affidavit, this Court need not conduct an evidentiary hearing pursuant to Franks v. Delaware, 438 U.S. 154 (1978).<sup>1</sup> See United States v. Singleterry, 821 F. Supp. 36, 40 (D. Me. 1993). Instead, this Court need only examine the affidavit submitted to the Maine District Court Judge

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<sup>1</sup> In Franks, the Supreme Court addressed the issue of the necessity of an evidentiary hearing as follows:

To mandate an evidentiary hearing, the challenger's attack must be more than conclusory and must be supported by more than a mere desire to cross-examine. There must be allegations of deliberate falsehood or of reckless disregard for the truth, and those allegations must be accompanied by an offer of proof. They should point out specifically the portion of the warrant affidavit that is claimed to be false; and they should be accompanied by a statement of supporting reasons. Affidavits or sworn or otherwise reliable statements of witnesses should be furnished, or their absence satisfactorily explained. Allegations of negligence or innocent mistake are insufficient. The deliberate falsity or reckless disregard whose impeachment is permitted today is only that of the affiant, not of any nongovernmental informant. Finally, if these requirements are met, and if, when material that is the subject of the alleged falsity or reckless disregard is set to one side, there remains sufficient content in the warrant affidavit to support a finding of probable cause, no hearing is required. On the other hand, if the remaining content is insufficient, the defendant is entitled, under the Fourth and Fourteenth Amendments, to his hearing.

Franks, 438 U.S. at 171-72.

to ascertain whether it contains sufficient facts to support a determination that there was probable cause to issue the warrant.

Regarding the issuance of a search warrant, the Supreme Court has stated that

[t]he task of the [warrant] issuing magistrate is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the 'veracity' and 'basis of knowledge' of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place.

Illinois v. Gates, 462 U.S. 213, 238 (1983); see also United States v. Jewell, 60 F.3d 20, 23 (1st Cir. 1995) ("Probable cause means simply that the totality of the circumstances gives rise to a 'fair probability' that a search of the target premises will uncover evidence of a crime."). Furthermore, the Government needs to make a showing of only a probability of criminal activity for there to be probable cause rather than a prima facie showing of such. United States v. Burke, 999 F.2d 596, 599 (1st Cir. 1993). In reviewing the issuance of a search warrant, this Court accords great deference to a magistrate's determination of probable cause. Jewell, 60 F.3d at 22; Burke, 999 F.2d at 598; United States v. Taylor, 985 F.2d 3, 5 (1st Cir. 1993), cert. denied, 508 U.S. 944 (1993).

In this case, having conducted a "totality of the circumstances" scrutiny of Bussiere's affidavit, this Court is satisfied that the issuing judge had a substantial basis for finding that there existed probable cause to believe that contraband and evidence of a crime would be found in the first-

floor, rear apartment at 98 Blake Street. The affidavit details two occasions on which a C.I. obtained cocaine from Debra Wing after she had entered an apartment on Blake Street. On both occasions, Wing said that they would have to go for a ride to buy the cocaine from her source. On each occasion, Wing was inside the apartment building only a short period of time.

Although Bussiere did not know which building Wing had entered on the first occasion, Agent Mulherin witnessed Wing enter the first-floor apartment at 98 Blake Street on the second occasion. In addition, on the second controlled purchase, Wing told the C.I. that they were going to the same place as the first time. Although Wing was not witnessed purchasing cocaine from someone inside the first-floor apartment at 98 Blake Street, a fair inference can be drawn that she obtained the cocaine there because she said she did not have any cocaine before entering, she was seen entering that apartment, she was inside the building only a few minutes, she had cocaine right after returning from the building, and she responded affirmatively when asked if she had obtained the cocaine.

Furthermore, the Court concludes that it was permissible for the issuing judge to rely on Bussiere's hearsay statements of Agent Mulherin without requiring a separate affidavit by Mulherin. In fact, the Supreme Court has stated previously that "[o]bservations of fellow officers of the Government engaged in a common investigation are plainly a reliable basis for a warrant

applied for by one of their number." United States v. Ventresca,  
380 U.S. 102, 111 (1965).

### **III. CONCLUSION**

Accordingly, it is ORDERED that Defendant's Motion to  
Suppress for Lack of Probable Cause in Search Warrant be, and it  
is hereby, DENIED.

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GENE CARTER  
Chief Judge

Dated at Portland, Maine this 10<sup>th</sup> day of May, 1996.